

DECISION

28957
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-215198**DATE:** July 27, 1984**MATTER OF:** National Service Company**DIGEST:**

1. GAO will deny protest against award to firm that submitted a "token" bid nearly a month before opening, certifying itself as small, and then lowered its price, since until exact time of bid opening, bidders may change their prices for any reason.
2. Under 15 U.S.C. § 637(b)(6), the Small Business Administration has conclusive authority to determine matters of small business size status for federal procurement purposes. Protest challenging firm's self-certification as small therefore must be directed to SBA.

National Service Company protests the Marine Corps' award of a contract for laundry and dry cleaning services at Camp Pendleton, California, alleging that the awardee, Crown Laundry and Dry Cleaners, Inc., did not qualify as a small business at the time of bid opening. National also protests the Small Business Administration's practice of allowing firms to self-certify their size status at the time of their submission of bids.

We deny the protest in part and dismiss the remainder.

The Marine Corps' solicitation, No. M00681-84-B-0021, a small business set-aside, had a bid opening date of April 27, 1984. According to the protester, Crown submitted a "token" bid and certified itself as small on March 30, 1984, only 1 day before the close of its fiscal year. Between that time and bid opening, Crown reduced its initial bid by approximately \$185,000, an amount that National maintains was unjustified because there were no major changes in the government's requirements. Crown, as lowest bidder, was awarded the contract; National was next-low.

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National contends that the SBA's practice enables firms like Crown, that may exceed the size standard for a particular procurement by bid opening date, to remain eligible based on earlier self-certifications. Accordingly, National requests that our Office disqualify Crown because its March 30 bid was not valid and because, due to a large number of government and private contracts and more than 500 employees, Crown is "for all intents and purposes a large business." In addition, National requests that we recommend a change in applicable regulations so that the time for determining size status will be at bid opening.

First, we cannot disqualify Crown because it lowered its bid between the time of initial submission and bid opening. It is axiomatic that until the exact time of bid opening (or the time for submission of best and final offers in negotiated procurement), a bidder or offeror may change its price for any reason. National's protest on this basis is therefore denied.

As for the challenge to Crown's status as a small business, National's protest is directed to the wrong agency. Under 15 U.S.C. § 637(b)(6) (1982), the SBA has conclusive authority to determine matters of small business size status for federal procurement purposes. National Designers, Inc., B-214577, March 17, 1984, 84-1 CPD ¶ 362.

Under implementing regulations, the controlling date for determining size status is the date of written representation as a small business, submitted as part of a firm's bid or offer. Moreover, a contracting officer generally may accept at face value a firm's self-certification as small. See Federal Acquisition Regulation, § 19.301(a), 48 Fed. Reg. 42,246 (1983), to be codified at 48 C.F.R. § 19.301(a); Defense Acquisition Regulation § 1-703(b), reprinted in 39 C.F.R. Pt. 1-39 (1983); 13 C.F.R. § 121.3-8 (1984).

Any bidder, offeror, or other interested party may challenge such self-certification by filing a protest with the contracting officer within 5 days after bid opening; the contracting officer must then forward the matter to SBA. See 13 C.F.R. § 121.3-5. Since National's protest

B-215198

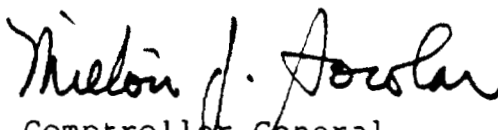
was not filed with our Office until May 11, 1984, it would have been untimely even if it had been submitted to SBA as the appropriate decisionmaking agency.

SBA regulations do provide that a firm determined to be other than small as a result of a late protest to the SBA shall be precluded from self-certification in future procurements where the size standard is not higher than the one in question. Id. National thus may seek an SBA determination of Crown's status in anticipation of future small business set-asides. In view of SBA's exclusive jurisdiction on matters related to size status, however, we dismiss the protest on this basis. Ford Service, Inc., B-213802, Dec. 19, 1983, 84-1 CPD ¶ 1.

National also challenges the use of the date of self-certification as the date for determining size status. The protester quotes from a GAO publication, "Government Contract Principles," 3d ed., which states that as a matter of policy, SBA requires firms to be small at both bid opening and time of award. This publication was issued in November 1980; SBA intentionally changed this policy in 1981, and it now considers the time of submission of a bid or initial proposal to be determinative for purposes of self-certification as a small business. See 13 C.F.R. § 121.3-8. National requests that we recommend that the bid opening date be used.

Since SBA has statutory responsibility with regard to small business size status, it is for SBA to determine whether its current regulation should be changed. We are requesting the Administrator of SBA to consider whether such a change is warranted in light of the concerns raised by the protester.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States